

REMARKS

Reconsideration of the application is requested in view of the above amendments and the following remarks. Claims 1, 28, 32 and 33 have been amended. New claims 34-39 have been added and depend from either claim 1 or claim 32. The amendments to the claims and the new claims are supported by at least the originally filed claims, Figures 1, 2, 5, 6 and 8-10, and the description of those Figures in the present application. No new matter has been added.

§ 102 Rejection

Claims 1, 26, 28, 29, 31, 32 and 33 were rejected under 35 U.S.C. § 102(b) as being anticipated by Campbell (U.S. 6,216,687). Applicants respectfully traverse this rejection.

Campbell discloses several fireplace embodiments that each include a firebox positioned within an outer enclosure. A plenum (e.g., bottom plenum 46, back plenum 48 and top plenum 50) or air passage is defined between the firebox and the outer enclosure. A fan draws air into the plenum, heat generated in the firebox is transferred into the circulating air, and the heated air is then discharged into the room in which the fireplace resides. Campbell discloses a catalyst element in the exit passageway from the firebox that oxidizes carbon monoxide and filters particulates from the air leaving the firebox that would otherwise be released into the ambient air. The catalyst element is positioned on top of the firebox between the plenum and the firebox (see Figures 1, 3 and 6 of Campbell) or in an exhaust duct at an outlet of the firebox (see Figures 9 and 10 of Campbell). Thus, Campbell discloses only filtration of air that passes through the firebox.

Campbell discloses positioning of the catalyst element in a passage defined by a combustion gas deflector 58 along an exterior surface of top wall 44 of the firebox. Therefore, Campbell fails to disclose a filter disposed within "an air passage that extends around an outer surface of at least the top, bottom and rear panels of the combustion chamber enclosure," as required by claim 1.

Campbell also fails to disclose "drawing intake air into the plenum through the air intake, passing the intake air only through the plenum, and exhausting the intake air out of the plenum through the exhaust outlet, whereby the intake air is filtered by the filter," as required by claim

28. As noted above, Campbell only discloses passing combustion products through the catalyst, wherein the combustion products must pass through the firebox in addition to passing through passages above and below the firebox.

Campbell further fails to disclose "positioning the filter within the plenum and spaced vertically below the combustion chamber," as required by claims 31. As noted above, Campbell discloses positioning of the catalyst on the top wall 44 of the firebox and not vertically below the firebox.

Campbell also fails to disclose "a filter disposed within the plenum at a position along the airflow path between inlet and outlets to the plenum, wherein the inlet and outlets to the plenum are fluidly separated from the combustion chamber," as required by claim 32. The inlet 62 and outlet 64 of Campbell are each in fluid communication with the firebox through the lower openings 74 and the outlet 88. As a result, the air in the plenum, in particular the air passing through the filter, is not fluidly separated from the firebox.

Campbell also fails to disclose "a plenum defining an air passage around at least the top, bottom and rear panels of the combustion chamber enclosure, . . . [and] a filter disposed within the air passage," as required by claim 33. The catalyst disclosed by Campbell is positioned within a passage defined along a top of the firebox. The catalyst is not positioned in that portion of the plenum that extends around the bottom or rear panels of the firebox. Furthermore, there would be no reason to position the catalyst in that portion of the plenum that holds only room air because the purpose of the catalyst is to remove combustion products generated in the firebox.

In view of the above, Applicants submit that Campbell fails to disclose every limitation of claims 1, 28, 31, 32 and 33, and the claims that depend from them.

§ 103 Rejections

Claims 1, 26, 28, 29, 31, 32 and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Campbell in view of Myrick (U.S. 6,666,206). Applicants respectfully traverse this rejection.

Campbell fails to disclose or suggest every limitation of claims 1, 28, 31, 32 and 33 for at least those reasons discussed above. Myrick fails to remedy the deficiencies of Campbell as it relates to claims 1, 28, 31, 32 and 33. Myrick discloses a fireplace insert used within a firebox of

the fireplace to capture some of the heat generated by the heat source and direct that heat into a living space within which the fireplace resides. The insert is a stand alone product that is very different structurally and functionally from a plenum or air passage defined between a combustion chamber enclosure and an outer enclosure of a fireplace. The insert must be positioned within the combustion chamber or firebox of the fireplace. As a result, the insert takes up significant space and is completely visible. Visibility of the insert is a significant drawback because it detracts from the aesthetic appearance of the fireplace. The horizontal configuration of the insert with the inlet and outlet positioned along the same horizontal plane prevents the insert from being able to provide natural convection flow of heated air through the plenum defined by the insert. For these and other reasons, one skilled in the art would not look to the insert of Myrick for modifying the plenum structure disclosed by Campbell. However, even if such a combination were made, Myrick fails to remedy the deficiencies of Campbell discussed above.

Myrick discloses an insert positioned completely inside of the combustion chamber. Therefore, Myrick fails to disclose a filter disposed within "an air passage that extends around an outer surface of at least the top, bottom and rear panels of the combustion chamber enclosure," as required by claim 1.

Myrick also fails to disclose "arranging the plenum between the combustion chamber enclosure and the outer enclosure with the air intake positioned vertically below the combustion chamber enclosure and the air exhaust positioned vertically above the combustion chamber enclosure," as required by claim 28. As noted above, Myrick only discloses an insert that is positioned inside of the combustion chamber with the inlets and outlets horizontally spaced apart within the combustion chamber.

Myrick further fails to disclose "positioning the filter within the plenum and spaced vertically below the combustion chamber," as required by claims 31. As noted above, Myrick discloses positioning of the inlet and outlet filter within the combustion chamber and not vertically below the combustion chamber.

Myrick also fails to disclose "a filter disposed within the plenum at a position along the airflow path between inlet and outlets to the plenum, wherein the inlet and outlets to the plenum are fluidly separated from the combustion chamber," as required by claim 32. The inlet and

outlet of Myrick insert are physically within the combustion chamber and are in direct fluid communication with the combustion chamber.

Myrick also fails to disclose "a plenum defining an air passage around at least the top, bottom and rear panels of the combustion chamber enclosure, . . . [and] a filter disposed within the air passage," as required by claim 33. The insert is positioned inside the combustion chamber of Myrick.

In view of the above, Applicants submit that Campbell and Myrick, alone or in combination, fail to disclose or suggest every limitation of claims 1, 28, 31, 32 and 33, and the claims that depend from them.


Claims 27 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Campbell in view of Morrow (U.S. 5,656,242), or Campbell in view of Myrick and further in view of Morrow. Applicants respectfully traverse this rejection. As discussed above, Campbell and Myrick fail to disclose or suggest every limitation of claims 1 and 28. Morrow fails to remedy the deficiencies of Campbell and Myrick as they relate to claims 1 and 28. Therefore, claims 27 and 30 are allowable for at least the reason they are dependent upon an allowable base claim. Applicants do not concede the correctness of this rejection.

In view of the above, Applicants respectfully request reconsideration of the application in the form of a Notice of Allowance. If a phone conference would be helpful in resolving any issues related to this matter, please contact Applicants' attorney listed below at 612.371.5387

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